

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON , D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

IN re )  
 )  
Review of the Prime Time )  
Access Rule, Section 73.658 (k) )  
of the Commission's Rules )

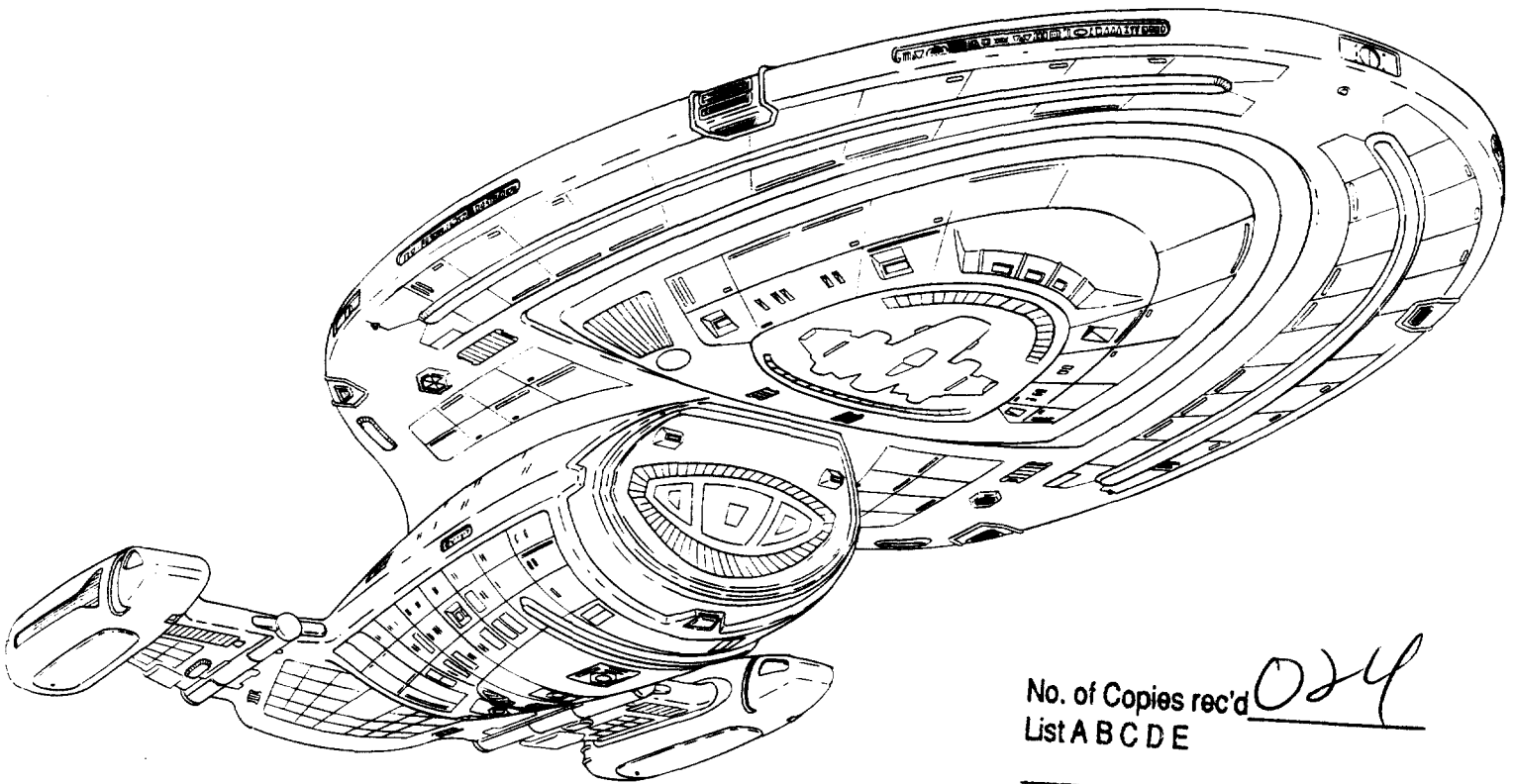
MM Docket 94-123

To: The Commission

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REPLY COMMENTS OF VIACOM INC.

THE PRIME TIME ACCESS RULE:  
WHERE NEW MEETS NEXT



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Exhibit A - Declaration of Steven Goldman

## SUMMARY OF ARGUMENT

PTAR cannot be dismissed as just another broadcast regulation that ought to be dismembered. It is not a rule whose value has simply run its course. PTAR is the linchpin -- the "critical force" -- of the successful emergence of new, and free, broadcast networks.

At its center, this proceeding is about the preservation of diversity and competition in the broadcast marketplace. Ultimately, it is about whether the Commission will with consistency and fairness preserve its long-held vision to encourage "the development of additional networks."

PTAR constitutes a pro-competitive market check that encourages and stimulates the formation of emerging broadcast networks. The operative facts calling for PTAR's retention are supported by empirical evidence and the practical workings of the broadcast marketplace. They are reinforced by a robust economic model -- the very enriched analytical framework sought by the Commission -- demonstrating that:

- PTAR, not cable carriage, has resulted in the long-term growth of independent UHF stations.
- Even with PTAR, independent UHF stations are far more economically fragile than their entrenched network affiliate competitors.
- The wide profitability gap between network affiliates and UHF independents has not been closed by cable carriage and continued to widen during the period of rapid cable growth.
- The access hour -- and the airing of popular, audience-proven off-network programming during that hour -- is crucial to the ratings and advertising dollars necessary to support independent stations, the vast majority of which are UHF stations.

- UHF stations, both existing and new entrants, comprise virtually the entire universe of available stations for emerging networks.

Even with PTAR, the record demonstrates that building a new network today is an extremely arduous task. For has recruited the most viable independents as affiliates in most markets -- in many instances the only independent -- and, as a result, was able to launch with 83% coverage of television households. UPN, by comparison, could only launch with 66% coverage by primary affiliates. The recent trend towards long-term affiliation agreements (10 years) and network equity investments in their affiliates means, as a practical matter, that many stations are permanently unavailable to new networks. The alternative is to approach the holders of new station construction permits or to convince potential investors to secure construction permits. First, however, the emerging network must achieve a certain threshold of success to make the investment of building a station to affiliate with it economically attractive.

The record also reveals several predictive warnings for a broadcast marketplace without PTAR:

- The established network affiliates will seize unrestricted control of the access hour as they readily outbid the weaker UHF independents for the popular access hour programming.
- Independent station ratings will plummet by as much as 58% during the crucial last half of the access hour.
- Independent station ratings will drop by as much as 67% during the 90-minute period consisting of the last half of the access hour and the first prime time hour.

- This rapid decline in independent station ratings will cause a spiraling economic slide leading to reduced independent station advertising revenues and a shrinking station base -- in the already small launch platform -- for emerging networks.

The record before the Commission has, therefore, established a direct and irrefutable linkage between the retention of PTAR and the success of emerging networks.

Those enterprises entering the field of emerging networks are doing so with a serious financial and managerial dedication to their success. Over \$300 million, for example, has been committed to the development of the nascent UPN network with over \$38 million already lost on its start-up. Notwithstanding those commitments, UPN will never be able to achieve its full potential unless it can continue to build an affiliate base allowing it to arrive within the zone of competition for national advertisers with Fox and the three older networks.

To do so, UPN must extend its national audience reach "in pattern" to attract and retain affiliates covering 90%-95% of the nation's viewers. To attract affiliates -- both existing stations and those with dormant construction permits -- UPN must also hold out the promise of a competitive prime time line-up. As a recent entrant not yet five months old, UPN is far short of these goals. Today, it has attained only a 67% audience reach with primary affiliates and distributes only four hours of prime time programming. PTAR is the fuel that allows UPN's journey to continue.

Is the FCC now prepared to conclude that Fox will be the only -- indeed the last -- emerging network? Is the door going to close on the Commission's cardinal goal to encourage "the development of additional networks to compete with existing networks" now that Fox has reached a level of competitive maturity? Fox, as we remind the Commission, has repeatedly

urged that PTAR be preserved so as not to impair the development of its own network, citing the fact that "many UHF stations are still struggling to survive and become competitive" and that the boost PTAR provides to these stations is "critical to their economic well-being." As Commissioner Ness observed in the recent matter of the Fox Television Stations, "Fox's contributions in beginning a fourth network have been invaluable." Amplifying on that theme, Commissioner Quello called the Fox network a force "in providing competition to the established broadcast networks and their affiliates."

Viacom urges the Commission to give emerging networks the same treatment under PTAR that allowed Fox to succeed as an emerging network. To do otherwise would create a broadcast environment clouded by injustice and thwart the very compelling public interest goals consistently endorsed by the FCC for so many years. Viacom also believes, for all of the salient reasons discussed above, that PTAR should be preserved unchanged.

If, however, the Commission determines that PTAR -- a rule that has prevailed in the broadcast marketplace for over 25 years -- should be repealed, it should at least adopt a transition rule which allows the emerging networks the opportunity to reach competitive maturity. To that end, Viacom suggests that the Commission adopt a transition mechanism "sunsetting" PTAR on the earlier of:

1. a fifth (or sixth) network attaining in pattern, primary affiliates reaching 90%-95% of television households and a program schedule of 15 hours of prime time programming per week; or
2. in 10 years, unless the proponents of retaining the rule can make a convincing showing in a proceeding initiated six months before the presumptive repeal date that sunset would cause severe market dislocations and be contrary to the public interest.

In the end, the FCC must view this case through the lens of the public's interest. That compelling interest, as the Commission has so often proclaimed, is to preserve and enhance competition in free over-the-air broadcasting -- a universal service that reaches all Americans. It is also, as members of the Commission have just emphasized in the Fox ownership proceeding, to safeguard the core principals of diversity in all of its forms, whether in the proliferation of new media voices, in the creation of new programming or in the development of new broadcast communications networks through which different viewpoints can be expressed.

PTAR is the enabling mechanism to secure and foster these bedrock goals. Because PTAR is the cornerstone in the formation of nascent networks its existence takes on heightened significance. PTAR will give independent UHF stations a lifeline until advanced television technologies erase the UHF-VHF imbalance -- a key issue in this proceeding. When that occurs, the emerging networks of today can be the future challengers of tomorrow to the established dominant networks.

PTAR has benefitted the millions of Americans who are not fortunate enough or wealthy enough to subscribe to cable or DBS. If diversity in broadcasting remains the foundation of U.S. communications policy, PTAR's worth has hardly run its full course. It would be a supreme irony if PTAR were now to be extinguished at the precise time that the development of a fourth network by Fox is drawing rave reviews by the Commission.

Indeed, as highlighted by the cover of these reply comments, PTAR is where a "new network meets the next century."



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<b>Access Rule, Section 73.658(k)</b>	)	<b>MM Docket 94-123</b>
<b>of the Commission's Rules</b>	)	

**To: The Commission**

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**REPLY COMMENTS OF VIACOM INC.**

Viacom Inc. ("Viacom") submits these Reply Comments in response to the Comments filed in this proceeding on March 7, 1995.

**I. INTRODUCTION**

This proceeding has major implications for the future of competition and diversity in the broadcasting industry because of the effect that repeal of PTAR would have on emerging broadcast networks. The Commission's commitment to the development of new broadcast networks has been strong, unwavering and one of its most enduring policies. When the Commission initiated the proceeding that led to the adoption of PTAR thirty years ago, it hoped to stimulate the growth of additional UHF stations so that those stations "might in turn provide a basis for a fourth network."<sup>1</sup> The Commission reiterated its commitment to additional networks when it adopted PTAR in 1970:

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<sup>1</sup> See Competition and Responsibility in Network Television Broadcasting, 45 FCC 2146, 2158 (1965) (Notice of Proposed Rulemaking). That notice of proposed rulemaking also proposed the financial interest and syndication rules.

Encouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of this Commission.<sup>2</sup>

When the emerging Fox Network appealed to the Commission in 1990 to repeal the financial interest and syndication rules so as not to impede its development, it cautioned the Commission that PTAR should be preserved:

[T]he fact remains that many UHF stations are still struggling to survive and become competitive. The modest boost these stations gain by running off-network programs during access time is critical to their economic well-being. In addition to this competitive consideration, the prime time access rule continues to serve the bedrock policy objectives of diversity and local station autonomy. In short, the prime time access rule stands independent of the financial interest and syndication rules, and should not be tampered with.<sup>3</sup>

The Commission ultimately concluded in the fin-syn proceeding that:

The emergence of Fox has greatly enhanced source diversity by offering viewers alternative, network-quality prime time programming. It has also bolstered outlet diversity by providing a solid financial base to Fox's affiliates, many of which were formerly marginal independent UHF stations.<sup>4</sup>

In order to avoid discouraging Fox from "expanding its prime time offerings to capacity," the Commission exempted emerging networks from all but the reporting requirements of the remaining fin-syn restrictions.<sup>5</sup>

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<sup>2</sup> Competition and Responsibility in Network Television Broadcasting, 25 FCC 2d 318, 333 (1970) ("1970 Order").

<sup>3</sup> Petition for Resumption of Rulemaking and Request for Temporary Relief filed by Fox Broadcasting Company, January 30, 1990, at 13-14 (emphasis added).

<sup>4</sup> See Evaluation of the Syndication and Financial Interest Rules, 8 FCC Rcd 3282, 3333 ("Fin-Syn Order"), on recon., 8 FCC Rcd 8270 (1993) ("Fin-Syn Reconsideration Order"), aff'd, Capital Cities/ABC, Inc. v. FCC, 29 F.3d 309 (7th Cir. 1994).

<sup>5</sup> See Fin-Syn Order at 3333-35.

Showing continuing solicitude for the growth of the fourth network, the Commission invited Fox this month to proffer a public interest showing in support of a request for a retroactive waiver of the 25% alien ownership benchmark based upon the contributions of the fourth network to diversity and competition.<sup>6</sup> Indeed, Commissioner Quello was ready to grant Fox such a waiver immediately, stating that:

[T]he creation of the fourth broadcast network was, and is, an overarching public policy goal that has been served by the creation of Fox. . . . [C]learly and compellingly News Corp's economic participation in the Fox structure over the last ten years has served the Commission's fundamental policy objectives of economic competition and viewpoint diversity.<sup>7</sup>

Similarly, Commissioner Susan Ness stated that "Fox's contribution in beginning a fourth network has been invaluable."<sup>8</sup>

Echoing the Commission's earlier policy determinations,<sup>9</sup> Commissioner Quello recites a litany of contributions that the development of a fourth broadcast network has made to the Commission's goals of economic competition and viewpoint diversity:

"providing competition to the established national broadcast networks and their affiliates"

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<sup>6</sup> See Fox Television Stations, Inc., FCC 95-188, ¶¶ 177-78 (May 4, 1995). Fox filed its waiver request on May 11, 1995.

<sup>7</sup> Id., Concurring Statement of Commissioner James H. Quello, at 2 (emphasis added).

<sup>8</sup> Stern, Foreign Ownership Waiver Likely for Fox, *Broadcasting & Cable*, May 8, 1995, at 16.

<sup>9</sup> See Fox Broadcasting Co., 5 FCC Rcd 3211 (1990) (Emergence of the Fox Network advanced the Commission's "longstanding public interest goal of fostering a competitive UHF service," "off-stated public interest objective of encouraging new national networks," and "longstanding interest in more, and more diverse, children's programming").

"provid[ing] economic, programming, and marketing support to enable many independent UHF stations to achieve stability and profitability"

"increas[ing] the amount of locally-produced news programming on its owned stations and [making] possible the expansion or creation of local news programming by Fox affiliates"

significantly increasing the amount of children's programming, including informational and educational programming, broadcasting each week

The question that the Commission must answer in this proceeding is: if these overarching public policy goals have been well served by the development of a fourth broadcast network, will they not be equally well served by the development of fifth and sixth broadcast networks? That question can only be answered in the affirmative, for the notion that there is already "enough diversity" is foreign both to the First Amendment and to core Commission policies.

If it is time to grant Fox "the freedom and assurance to again devote all its resources to providing the public a strong, competitive, diverse, American fourth network,"<sup>10</sup> then it seems only fair and appropriate to give the emerging fifth and sixth networks the opportunity to develop into strong, competitive, diverse, American networks. UPN has committed substantial resources toward that end, and has an experienced management team and an impressive array of creative talent ready to undertake that task. Viacom is not asking the FCC to waive any rules or policies in order to permit the growth of the new networks. On the contrary, it is asking that long-standing rules and policies be preserved and applied with

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<sup>10</sup> Id. at 6 (emphasis in original).

consistency and fairness until the new networks can compete in the marketplace with the established networks. To do otherwise would thwart achievement of the compelling public interest goals pursued by the Commission for so many years.

Lest these high stakes become obscured by the myriad disputes among the parties concerning economic data and other details, Viacom focuses in these Reply Comments on the larger implications of repeal of PTAR for the future of new networks, diversity and competition -- implications which the comments of the networks and The Coalition to Enhance Diversity ("Disney Coalition"), focusing narrowly on their own interests, ignore or downplay. In any event, most of the arguments made by the proponents of repeal were contemplated by, and have already been refuted in, Viacom's opening comments. To the extent that they merit further reply, Viacom replies specifically to those arguments in Appendix A attached hereto.

## **II. LIKE THE FOX NETWORK BEFORE THEM, THE EMERGING NETWORKS NEED TIME TO GROW.**

Repeal of PTAR at the present time would place obstacles in the path of the new networks, making it immeasurably more difficult, and perhaps impossible, for them to realize their full potential and deliver on their promise of providing strong new program services to the public. While the established networks all steadfastly deny in their comments that PTAR has contributed to the growth of independent stations or new networks, ABC ironically identifies precisely the reasons why repeal of PTAR poses such a direct and serious threat to newly emerging networks like UPN and WB. In discussing the importance of its affiliates to ABC, ABC makes two assertions that are central to the debate over PTAR and its importance to emerging networks:

[The NPRM] overlooks the network's need for an effective outlet in substantially all local markets, particularly since the network's ability to offer advertisers full nationwide coverage is a critical advantage in competing against media (such as cable networks) that cannot offer advertisers the same benefit. . . .

[T]he success of each network's prime-time schedule is closely linked to the strength of the lead-in provided by its affiliates' local . . . programs. . . .

ABC Comments at 9 (emphasis added).

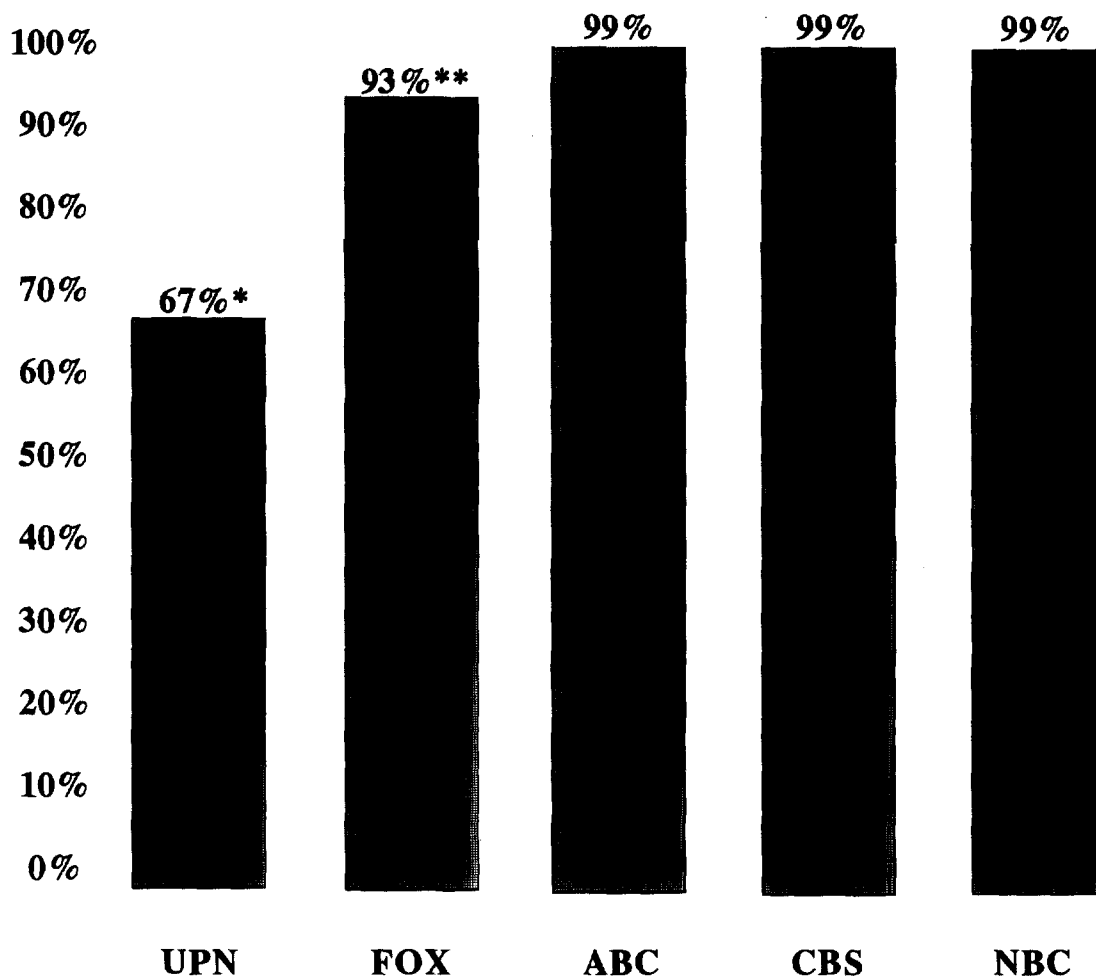
These two basic facts -- that full nationwide coverage is critical to the success of a network, and that the success of a network's prime time schedule is closely linked to the strength of its affiliates' lead-in programming -- are as true of the emerging networks as they are of ABC and the other established networks. And it is because of these two facts of the network business that preservation of PTAR's core functions during the development of the new networks will be critical to their success.

Viacom demonstrated in its opening comments that UPN has a long way to go before it attains competitive parity and enjoys that "critical advantage" identified by ABC: full nationwide coverage.<sup>11</sup> UPN's primary affiliates deliver its programming to 67% of the nation's television households, compared to the 99% primary coverage of ABC, CBS and NBC and Fox's 93% primary coverage:

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<sup>11</sup> See Viacom Comments at 8-10.

**% PRIMARY COVERAGE OF U.S. TELEVISION HOUSEHOLDS**  
**UPN vs. ABC, CBS, NBC, FOX**



Source: NTI, 1995.

\* UPN has an additional 16% coverage through secondary affiliates.

\*\* This is an estimate of Fox's primary affiliate coverage based on NSI data. Fox's total national coverage through primary and secondary affiliates, based on NTI data, is 97%.

UPN's coverage disadvantage is even more pronounced than is apparent from the figures shown above because UPN has primary affiliates in only 40 of the important top-50 markets, whereas ABC, CBS, NBC and Fox each have primary affiliates in all of the top-50 markets.

UPN achieves coverage of an additional 16% of television households through secondary affiliations using out-of-pattern clearances. While this coverage is very helpful in delivering UPN's present limited schedule of prime time programming, secondary affiliations reduce UPN's attractiveness to advertisers and create obstacles to UPN's long-term growth. To assure that a network advertiser reaches the audience it seeks, it is important that as much of the network's coverage as possible be "in pattern" -- *i.e.*, broadcast simultaneously in all markets. This is particularly important for a new network trying to establish a "network" identity with advertisers.

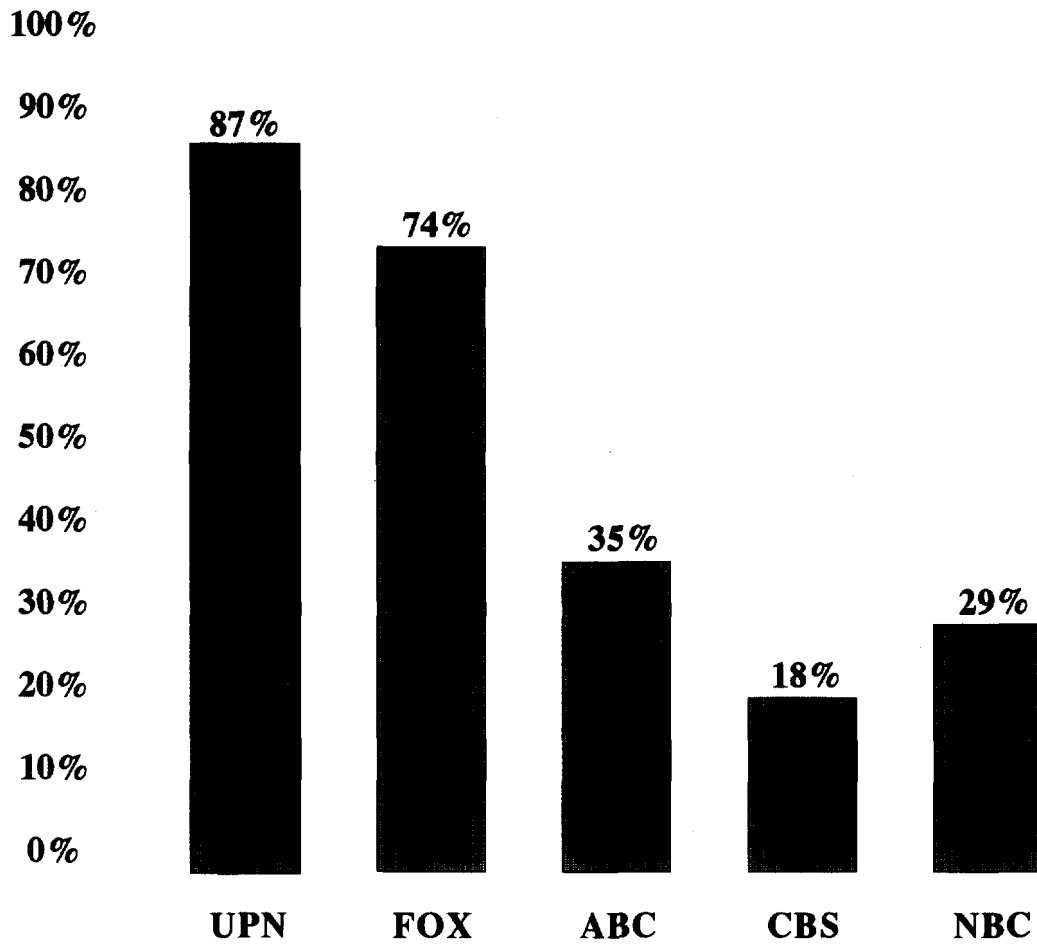
Thus, the fact that 16% of UPN's coverage is achieved through secondary affiliations using out-of-pattern clearances -- sometimes not even during prime time -- puts it at a great disadvantage in competing with the established networks. Moreover, as UPN's program schedule expands beyond its present four hours of prime time programming per week, its secondary affiliates will be unable to air the network's full prime time schedule, thereby limiting its ability to grow and finance new programming. In short, UPN is far from coverage parity with the four established networks and its present complement of affiliates limits both its advertising revenues and its ability to expand its program schedule in the long-term.

Moreover, all coverage is not created equal. As shown on the chart on the next page, fully 87% of UPN's primary affiliates are UHF stations, compared to only about 25% of the affiliates of ABC, CBS and NBC. And 83% of the total number of UPN's affiliates (primary and secondary) are UHF stations.



**% OF PRIMARY AFFILIATES THAT ARE UHF STATIONS**

**UPN vs FOX, ABC, CBS AND NBC  
(PROJECTED FOR FALL 1995)**



Source: Petry Rep Firm Memo

As demonstrated by the LECG Report, the UHF handicap continues to depress the performance of UHF stations, even in homes that have access to cable television.<sup>12</sup> The large competitive disadvantage suffered by UHF stations is apparent from the chart on the following page, which shows that UHF independents and affiliates in the top-50 markets have 48%-49% lower ratings than their VHF independent and affiliate counterparts, respectively:

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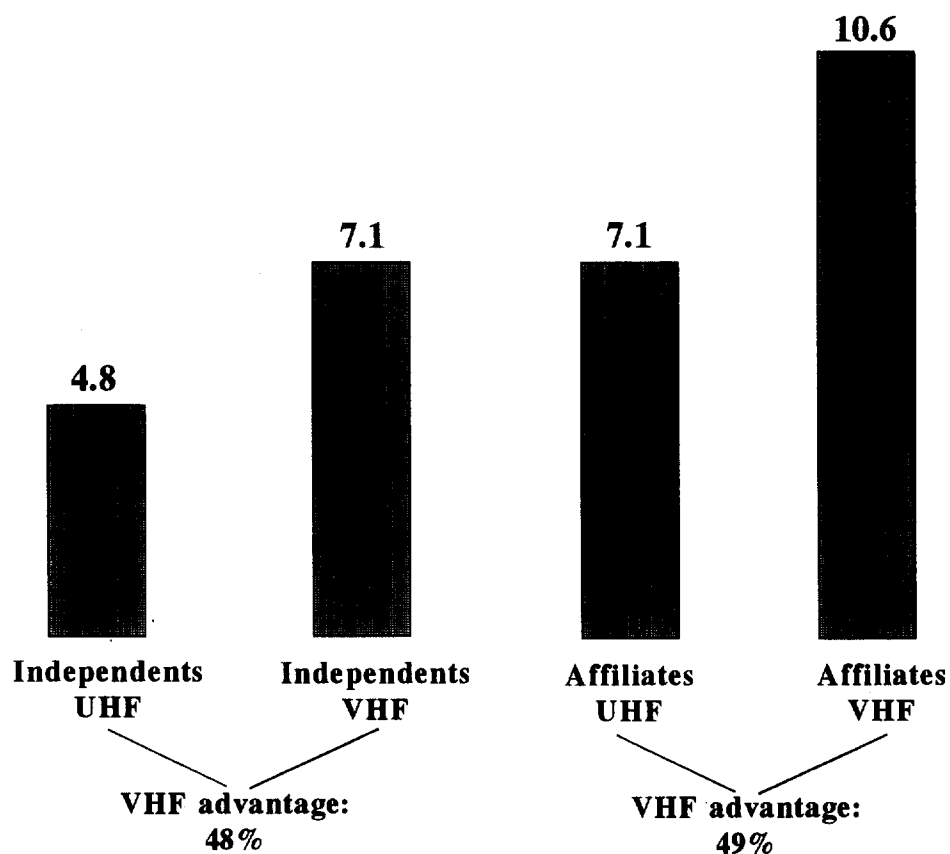
<sup>12</sup> See Viacom Comments at 10-14, 27-29; LECG Report at 41-44. See also Appendix A at 7-9.

## THE CONTINUING VHF/UHF DISPARITY

February 1995

**M-F  
7:30-8:30 p.m.  
rating**

15  
14  
13  
12  
11  
10  
9  
8  
7  
6  
5  
4  
3  
2  
1



Source: NSI 2/95  
Affiliates are ABC, CBS and NBC  
Independents include FBC, UPN and WB  
Markets 1-50

In short, UHF coverage is not equivalent to VHF coverage in terms of audience reach.

The implications of these statistics are clear. UPN must grow if it is to become a competitive force in prime time television. Immediate repeal of PTAR would substantially undermine the ability of UPN to more fully develop. At the outset, repeal would weaken UPN's existing affiliate base. PTAR gives UPN's affiliates a lifeline -- a chance to compete during a crucial one-hour window of prime time -- while the network expands its coverage and program schedule. As the UPN Affiliates Association states in its comments:

In order for the UPN affiliates to continue to support UPN, as it searches for first run programs and a program mix that will sustain an acceptable level of viewership, affiliates must remain financially strong. To this fledgling group of UPN affiliates, PTAR is the "nail" that holds all the critical pieces together. To remain financially strong, the UPN top-50 affiliates must compete successfully against the stronger network affiliates which dominate those markets. The access period provides an avenue in prime time when the Association's members can counter-program tested off-network shows with known audience potential against the successful first run syndicated shows which are purchased by the primary network affiliates.<sup>13</sup>

If PTAR were repealed, affiliates of the established networks would easily outbid the weaker UHF independents for popular access hour programming, causing independent station ratings to plummet by as much as 58% during the last half of the access hour and 67% during the 1-1/2 hour period from 7:30-9:00 p.m., EST.<sup>14</sup> This rapid decline in independent station ratings would cause a spiraling economic slide in independent station revenues. These declining ratings and revenues would erode UPN's existing station base and deter

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<sup>13</sup> Comments of The UPN Affiliates Association at 8-9 (citation omitted).

<sup>14</sup> See LECG Report at 47-52.

entrepreneurs from starting up new stations, making it impossible for UPN to achieve or even approach coverage parity, as Fox has done over the past 8 years.<sup>15</sup>

Repeal of PTAR would also make it difficult for the new network to grow because of the second fact of the network business identified by ABC: the performance of a network's prime time programming is closely linked to the strength of its affiliates' lead-in programming. LECG has submitted empirical evidence in this proceeding that PTAR has provided a boost not only to the ratings of independent stations during the access hour, but also during the first hour of prime time. LECG predicts that repeal of PTAR would cause the ratings of independent stations to drop by as much as 67% during the 90-minute period consisting of the second half of the access period and the first hour of prime time.<sup>16</sup> Because of the well-known effect of access hour ratings on prime time ratings, PTAR will play an important role in helping UPN's affiliates build an audience for the new network's prime time schedule.<sup>17</sup> If this is important to a mature network like ABC -- as ABC maintains -- it is even more important to a fledgling network like UPN, which must build its network identity and audience from the ground up.

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<sup>15</sup> See Viacom Comments at 16-19; Section III.B infra.

<sup>16</sup> See LECG Report at 48.

<sup>17</sup> See Comments of UPN Affiliates Association at 8-9.

**III. REPEAL OF PTAR NOW, BEFORE THE NEW NETWORKS HAVE A CHANCE TO MATURE, WOULD BE AN ABDICATION OF THE COMMISSION'S STATUTORY MANDATE AND LONG-STANDING COMMITMENT TO FOSTERING COMPETITION AND DIVERSITY IN THE BROADCAST INDUSTRY.**

**A. New Broadcast Networks will Further the Commission's Central Goals of Outlet Diversity, Source Diversity, Program Diversity, and Competition at the National and Local Levels.**

The broadcasting industry is standing at the threshold of a new era of unparalleled competition and diversity. The comments and economic studies filed in this proceeding show that PTAR has not only reinvigorated a first-run syndication industry that was moribund prior to its adoption, but has also played a vital role in strengthening and contributing to the growth of independent television stations. Without this expansion of the independent television sector, the growth of the Fox Network and, more recently, the emergence of the new UPN and WB networks, would simply not have been possible.<sup>18</sup>

These new broadcast networks will expand the array of programming available free, over-the-air to all households and inject new competition and vigor into the national programming market. As the Disney Coalition's economists explain:

Economic theory suggests that entrants will tend to enter with products that are superior to current offerings, or at least differentiated from them. In this way, entrants are able to attract viewers and advertisers away from incumbents by offering a segment of the population a preferred product. Empirical evidence confirms that entrants tend to be more "innovative" than established firms. Furthermore, threatened by entry, incumbent firms are spurred on to be more innovative themselves.<sup>19</sup>

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<sup>18</sup> See LECG Report at 56, 88-95; Viacom Comments at 8-26.

<sup>19</sup> O. Williamson and G. Woroch, A Comparative Efficiency Analysis of the FCC's Prime Time Access Rule, March 7, 1995 ("Coalition Economic Analysis") at 41 (footnotes omitted), submitted by The Disney Coalition.

Indeed, the evidence suggests that the Fox Network, launched in 1986, has shaken up the network broadcasting business, offering viewers a significant new source of original prime time programming, pioneering new program genres, and supporting the launch of newscasts by many of its affiliates.<sup>20</sup> UPN too promises to offer an expanding array of programming choices to the public -- programs like the popular new "Star Trek: Voyager", fresh prime time dramatic and comedy programming, and a full slate of new programming for children during afternoon and weekend hours.<sup>21</sup>

It would be a mistake to dismiss UPN and WB as merely two more among an increasing number of program services available to television viewers that subscribe to cable or other multichannel subscriber services. They are national broadcast networks that are available to all television viewers in markets where they are able to sign up affiliates, regardless of the viewers' ability or willingness to pay for programming.

In addition, unlike cable networks, new broadcast networks will strengthen, over time, the independent, mostly UHF stations that affiliate with them. The Commission has acknowledged on a number of occasions that the Fox Network has strengthened its affiliates.<sup>22</sup> And although UPN just commenced operation this year, several of its affiliates have already posted significant ratings gains during the four prime time hours when it

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<sup>20</sup> See Stauth, Fox in the Network Henhouse, *The New York Times*, July 15, 1990, Sunday Magazine at 28, 30 ((Fox has lit "a fire of fear in the bellies of ABC, CBS and NBC, forcing them to reassess their own programming."); Comments of Fox Broadcasting in MM Docket No. 90-162, February 1, 1993, at 1-7. See also pages 2-4 supra.

<sup>21</sup> See Viacom Comments at 7-8.

<sup>22</sup> See Section I supra.

provides network programming. A few examples of ratings gains by UPN affiliates during the 8 p.m. time slot on Monday and Tuesday evenings are provided below:

STATION/ MARKET	FEB '95 PROGRAM	FEB '94 PROGRAM	RTG/SHR % INCREASE
WSTR, Cincinnati	MON 8PM Voyager	Cobra	+114%/+120%
	TUE 8PM Marker	Matlock	+18%/+17%
WNFT, Jacksonville	MON 8 PM Voyager	Movie	+345%/+333%
	TUE 8PM Marker	Movie	+14%/+33%
WRBW, Orlando <sup>23</sup>	MON 8PM Voyager	Hill St. Blues	+290%/+233%
	TUE 8PM Marker	Hill St. Blues	+200%/+100%
KRRT, San Antonio	MON 8PM Voyager	FOX Movie	+61%/+44%
	TUE 8PM Marker	FOX/Various	+52%/+40%
WTVX, West Palm Beach	MON 8PM Voyager	Movie	+96%/+100%
	TUE 8PM Marker	Movie	+13%/+25%
WVEU, Atlanta	MON 8PM Voyager	Kojak	+470%/+700%

Thus, UPN and WB, like Fox before them, can be expected to strengthen their affiliates and enhance their ability to provide news and other local programming.

<sup>23</sup> This station commenced operation during the summer of 1994, so the baseline rating is for November 1994.



Furthermore, the prospect of affiliation with an emerging network may encourage the start-up of new stations that might not otherwise be built. Indeed, six of the UHF stations that have become affiliated with UPN commenced service during 1994.<sup>24</sup> And, as discussed in Viacom's opening comments, at least 30 new stations in smaller markets signed on as Fox affiliates after the Fox Network's initial launch.<sup>25</sup>

In sum, the emergence of new networks will not only realize the Commission's goal of increasing program source diversity, it will also contribute directly to outlet diversity in both large and small markets. In recent years, the Commission has stressed the importance of outlet diversity not only as a valid goal in itself, but also as a strong stimulus of source diversity and an essential condition of viewpoint diversity.<sup>26</sup>

**B. Repeal of PTAR Will Thwart the Development of New Networks.**

Both the established networks and the Disney Coalition dance around the issue of the impact of repeal on the new networks. The Disney Coalition admits that WB and UPN are "only 'incipient' networks," each providing "a network feed only one and two nights per

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<sup>24</sup> Those stations are WRBW, Orlando (4/15/94), WFTE, Louisville (3/15/94), WXGZ, Green Bay (6/3/94), WWMB, Florence (9/21/94), KMOV, Medford (8/8/94), and WYDC, Elmira (9/4/94).

<sup>25</sup> See Viacom Comments at 13 and Appendix E.

<sup>26</sup> See Review of the Commission's Rules Governing Television Broadcasting, 1995 FCC Lexis 328, ¶ 61 (Jan. 17, 1995) ("Television Ownership FNPRM") ("without a diversity of outlets, there would be no real viewpoint diversity -- if all programming passed through the same filter, the material and views presented to the public would not be diverse"); Evaluation of the Syndication and Financial Interest Rules, 8 FCC Rcd 3282, 3320-21, on recon., 8 FCC Rcd 8270 (1993), aff'd, Capital Cities/ABC, Inc. v. FCC, 29 F.3d 309 (7th Cir. 1994) ("while the promotion of each type of diversity is therefore independently justified under the rubric of the public interest, by promoting outlet diversity, the three principles work together to provide a robust programming market").